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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

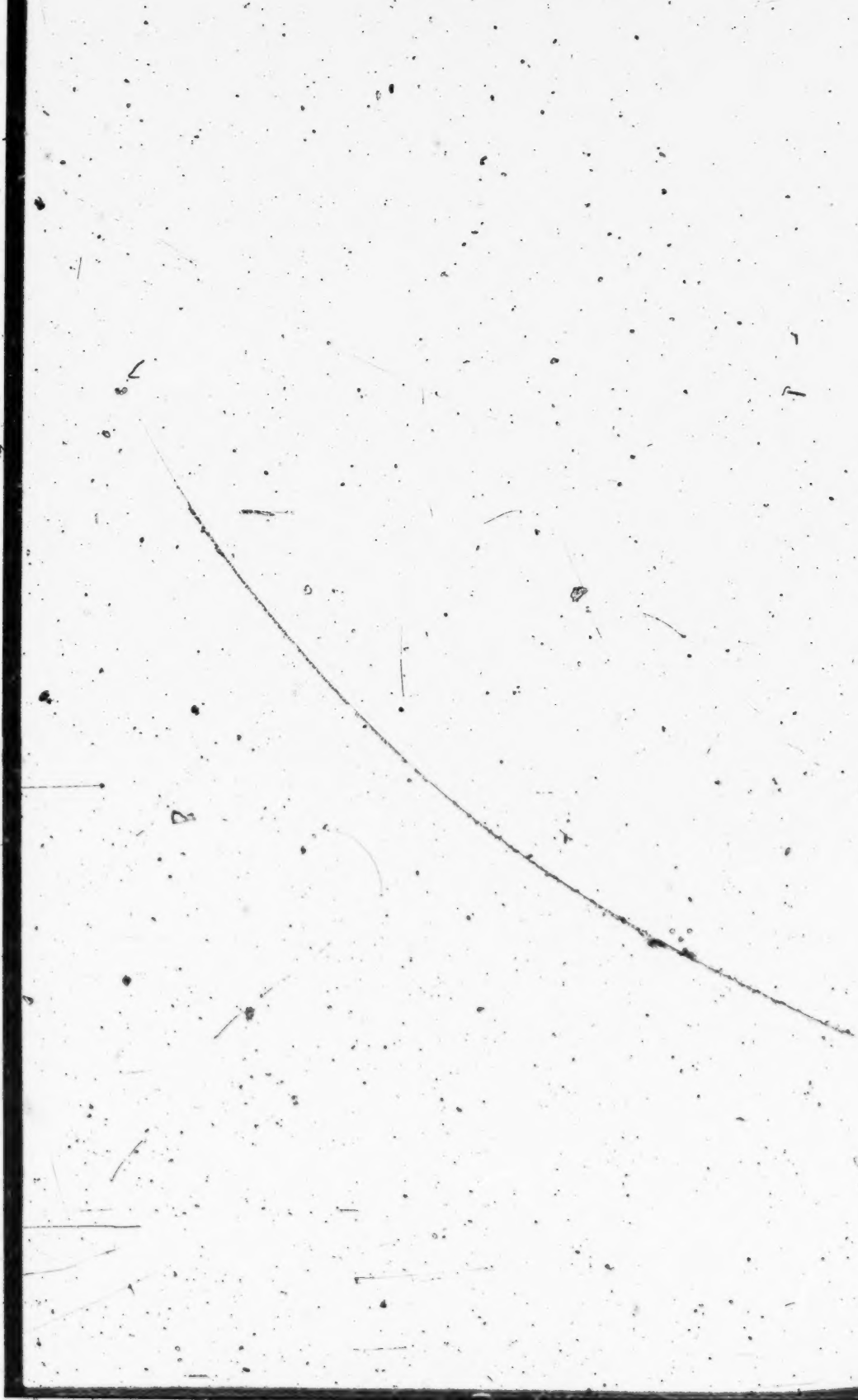
vs.

MRS. WILL GAINES, RESPONDENT.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ, AND BRIEF.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for

The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, Calif.
The Federal Land Bank of Spokane, Spokane, Wash.



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No. 112

THE FEDERAL LAND BANK OF COLUMBIA

vs.

MRS. WILL GAINES.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the eleven Federal land banks named below, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiæ*.

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for

The Federal Land Bank of Springfield, Springfield, Mass.
The Federal Land Bank of Baltimore, Baltimore, Md.
The Federal Land Bank of Louisville, Louisville, Ky.
The Federal Land Bank of New Orleans, New Orleans, La.
The Federal Land Bank of St. Louis, St. Louis, Mo.
The Federal Land Bank of St. Paul, St. Paul, Minn.
The Federal Land Bank of Omaha, Omaha, Nebr.
The Federal Land Bank of Wichita, Wichita, Kans.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, Calif.
The Federal Land Bank of Spokane, Spokane, Wash.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA

vs.

MRS. WILL GAINES.

BRIEF OF IRVING P. WHITEHEAD, AS AMICUS CURIÆ.

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1. Preliminary Statement.

Leave to file this brief has been requested by the undersigned as counsel for the eleven Federal land banks named in the accompanying motion.

Each Federal land bank is a corporation organized, chartered and operated under an Act of Congress, approved July 17, 1916, and Acts amendatory thereof, all of which are known and cited as the Federal Farm Loan Act (12 U. S. C., Chapter 7). Each bank is authorized and empowered to engage in the business of lending money to farmers on the security of qualified first mortgages on farm lands situated in the States of its district. The banks on whose behalf this brief is filed, together with the Federal

Land Bank of Columbia, constitute a cooperative system of land banks which conduct and carry on their operations under the same conditions and limitations as set forth in their respective charters and as prescribed by the Federal Farm Loan Act.

The case which is now before this Court involves an interpretation and a practical application of certain provisions of the Federal Farm Loan Act, a Federal statute, which provisions have never been construed or passed upon by this Court or by any Federal court. So far as counsel is advised these particular provisions have been judicially considered only in the case at bar.

All of the Federal land banks, in transacting business with and through the national farm loan associations in their respective districts, have proceeded under the same interpretation of the Federal Farm Loan Act as that which is urged in the brief filed by the Federal Land Bank of Columbia in this case. Therefore, the decision of the questions involved in this case will affect the eleven banks on whose behalf this brief is filed, equally with the petitioning bank. The issues of law involved in this case are of fundamental importance to all the banks of the system.

This brief is respectfully submitted in the belief that the Supreme Court of North Carolina erred in holding that the mortgage executed by Mrs. Will Gaines to secure a loan from the Federal Land Bank of Columbia did not constitute a valid and enforceable lien upon the property described therein.

2. Scope of this Brief.

This *amicus* concurs in the statements which are contained in the brief filed on behalf of the Federal Land Bank of Columbia. The conclusions which are urged upon the court in that brief, and the reasoning in support thereof,

are believed by this *amicus* to be sound and correct. It is, therefore, prayed that the contents of that brief be read as if stated by this *amicus* on behalf of his clients, the eleven banks for which he speaks.

This brief will be confined to a discussion of certain provisions of the Federal Farm Loan Act which were not discussed in detail in the brief on behalf of the Columbia bank. Counsel believes that consideration of these provisions will demonstate the unsoundness of the decision of the court below.

3. The Decision Below.

The Supreme Court of North Carolina held that there was a failure of consideration for a mortgage executed in favor of a Federal land bank, where the loan funds had been paid over to the national farm loan association through which the mortgage loan was negotiated. For the purpose of this brief, no point will be made of the fact that the loan funds were actually transmitted by means of a check drawn to the order of the borrower and the association, which check was duly indorsed with the names of both payees, the proceeds thereof being subsequently transmitted to and received by the holder. The court below treated this case as if the funds had been delivered direct to the association, ignoring the procedure just mentioned. Without concurring in the correctness of the lower court's view in this regard, counsel will, for the purpose of this brief, accept that view and treat the case as if the bank had delivered the proceeds of this loan to the association.

The Supreme Court of North Carolina, in the opinion rendered in this case, made the following statement with respect to Federal land bank loans:

"No loan can be made by a Federal Land Bank directly to the borrower. When the application for a loan has been received by a Federal Land Bank, through a National Farm Loan Association, *the Act requires that funds to close the loan shall be transmitted by the land bank to the association,* for disbursement to the borrower.

"Under the provisions of the Act, the National Farm Loan Association is a public agent, designated by the Act as intermediary between the bank and the borrower." (Italics added.)

It is the belief of this *amicus* that the court erred in placing the above quoted interpretation upon the provisions of the Federal Farm Loan Act relative to loans through national farm loan associations. Counsel believes that a correct interpretation of the Act leads to the following conclusion: Where a loan is negotiated by a borrower through a national farm loan association, which indorses and becomes liable for the mortgage given as security, such mortgage is a valid and enforceable contract, for which full consideration has passed when the Federal land bank has transmitted the loan funds to the association for the account of its member.

4. The Capital of a Federal Land Bank.

Section 4 of the Act (12 U. S. C. § 671) provides that the Federal Farm Loan Board shall divide the continental United States into twelve Federal land bank districts, apportioned with due regard to the farm loan needs of the country, and that the board shall establish in each district a Federal land bank, with its principal office located in such city within the district as the board shall designate.

Section 5 of the Act (12 U. S. C. § 691) requires that every Federal land bank shall have, before beginning business, a subscribed capital of not less than $750,000; that

the capital stock shall be divided into shares of $5 each; that the original stock may be subscribed and held by any individual, firm, or corporation, or by the government of any State or of the United States; and that the Secretary of the Treasury shall subscribe the balance of said $750,000 not otherwise subscribed.

In order to launch the Federal land bank system, it was necessary to provide a working capital until the operations of the system were sufficient to provide the requisite capital funds. Provision was made, however, for the retirement of the original capital stock of the Federal land banks, after the capital stock of any bank subscribed by national farm loan associations should amount to $750,000, so that all stock in the banks should be owned by the national farm loan associations of their respective districts. Section 5 of the Act (12 U. S. C. § 693) provides that stock in a Federal land bank held by national farm loan associations shall not be transferred or hypothecated, and that the certificates therefor shall so state.

Stock in a Federal land bank is purchased by a national farm loan association whenever the association obtains a loan from the bank for one of its members. Under Section 7 of the Act (12 U. S. C. § 711) the association must subscribe for capital stock of the land bank in the amount of 5 per cent of any loan which it desires to secure for any member, subscription to be paid in cash upon the granting of the loan by the bank, and such stock to be held by the bank as collateral security for the payment of the loan. Such stock must be paid off and retired upon full payment of the mortgage loan in connection with which it is subscribed. Therefore, the amount of outstanding stock issued by any Federal land bank fluctuates from time to time, in fact, perhaps from day to day, depending upon the aggregate amount of outstanding loans made by the bank.

At least 25 per cent of that part of the bank's capital for which stock is outstanding in the name of national farm loan associations must be held in quick assets (12 U. S. C. § 697). The capital of a Federal land bank which is contributed through the purchase of stock in such bank by national farm loan associations, and which is available as working capital, is but a very small part of the funds required by the bank in making farm loans. Funds for loaning purposes are obtained, for the most part, by the issuance and sale of bonds in the manner discussed below.

5. Powers of Federal Land Banks.

For the purpose of this brief it is not necessary to consider in detail the several powers of a Federal land bank as specifically enumerated in Sections 4 and 13 of the Act (12 U. S. C. §§ 671-683 and 781). It will be sufficient at this point to call attention to the following powers which were expressly vested in each bank by Section 13 of the Act:

> (*a*) "To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act * * *."
>
> (*b*) "To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting."
>
> (*c*) "To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section 12 of this Act (12 U. S. C. § 771)."

The qualified first mortgages referred to in subparagraphs (*b*) and (*c*), above, are such as are eligible under the Act for deposit with the registrar as collateral security

for farm loan bonds issued by the land bank. Section 19 of the Act (12 U. S. C. § 854) provides that:

> "No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in sections four, seven, twelve, fifteen and sixteen [12 U. S. C. §§ 671-683, 711-723, 771, and 801-808]."

This section, as amended by the Act of March 4, 1933, empowers the registrar, when authorized and directed so to do by the Federal Farm Loan Board, to accept as collateral, if otherwise eligible, any first mortgage in connection with which the land bank depositing the same has agreed to defer the collection of the principal portion of maturing installments for a period of time in the manner stipulated therein.

It should be stated at this point that the farm loan registrar is a public official wholly independent of the Federal land bank. He is appointed by the Federal Farm Loan Board, under the provisions of Section 3 of the Federal Farm Loan Act (12 U. S. C. § 656). In general it may be said that his duties under the Act are those of a custodian and trustee.

6. Federal Land Bank Bonds.

It has previously been stated that the funds which are loaned by Federal land banks on farm mortgage security are obtained, for the most part, through the sale of bonds issued against eligible collateral. This is the converse of the situation obtaining in the case of insurance companies, which find in the mortgage loan field a means of investing income earned from premiums on their policies. A Federal land bank has no such source of income, being re-

stricted to the business of lending money on farm mortgage security.

The only limitation placed by the Act upon the volume of bonds which may be issued by a Federal land bank, as contrasted with its outstanding capital stock, is contained in the following provisions:

Section 14 (12 U. S. C. § 791):

> "No Federal land bank shall have power * * * To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital or surplus * * *."

Section 7 (12 U. S. C. § 722):

> "The capital stock of a Federal land bank shall not be reduced to an amount less than five per centum of the principal of the outstanding farm loan bonds issued by it."

Section 18 of the Act (12 U. S. C. § 841) provides that:

> "Any Federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this Act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. *With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of * * * [the Act]; or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued.*" (Italics supplied.)

Section 18 of the Act (12 U. S. C. §§841-844) further provides for the investigation of the mortgages which are tendered by a bank as security for a proposed issue of bonds, and prohibits the issuance of bonds without approval in writing by the Federal Farm Loan Board.

Section 19 of the Act (12 U. S. C. §§ 851-856) provides that whenever an issue of bonds has been approved, the farm loan registrar having custody of the first mortgages and bonds tendered as collateral security shall retain in his custody those first mortgages and bonds which are to be held as collateral security; and that the land bank which is to issue the bonds shall transfer to the registrar, by assignment, in trust, all first mortgages and bonds which are to be held by the registrar as collateral security, "said assignment providing for the right of redemption at any time by payment as provided in this Act and reserving the right of substitution of other [qualified] mortgages * * * Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds."

This section of the Act also provides that:

> "It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor."

Section 20 of the Act (12 U. S. C. §§ 861-863) provides that farm loan bonds—

> "shall be issued in series of not less than $50,000, the amount and terms to be fixed by the Federal Farm Loan Board";

and that they shall be delivered through the registrar of the district to the bank applying for the same.

Section 21 of the Act (12 U. S. C. § 872) provides that:

> "Every Federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons,

for interest payments due upon any farm loan bonds issued by other Federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed * * *."

The Act provides in detail for the form of farm loan bonds, for the manner in which they shall be executed and certified, etc., which details are not touched upon in this brief. Provision is made also for consolidated bond issues, to be participated in by some or all of the Federal land banks, in accordance with a procedure essentially similar to that outlined above in connection with farm loan bonds issued by an individual bank.

From the foregoing provisions of the Act, it is apparent that any Federal land bank which is making loans in large volume must avail itself of the provisions of the Act for obtaining money upon the issuance of bonds; and that the Act clearly contemplated lending activities which would involve the issuance of bonds up to the maximum ratio of $20 for each dollar of outstanding stock. This procedure appears to involve the investment of the bank's capital to the extent of $50,000 or more in qualified first mortgages; the deposit of such mortgages as collateral security for bonds of like amount; the sale of such bonds, and the investment of the proceeds of sale in further mortgages which in turn will be deposited as collateral security for further bond issues. Only in this manner can the banks obtain funds with which to meet a large current demand for loans.

7. This Case and Its Relation to Federal Land Bank Bonds.

In the case at bar, a Federal land bank made a loan through a national farm loan association. The Court held

that although the association had received the full proceeds of the mortgage loan, the mortgage executed to secure the same did not constitute a valid lien upon the borrower's land. If the decision of the lower court should be sustained, the Federal land banks would find themselves with outstanding bonds secured in part by mortgages which have failed of consideration, because in many instances the indorsing national farm loan associations have not completed their disposition of the loan proceeds.

As has been stated in the brief filed on behalf of the Federal Land Bank of Columbia, most loans made by Federal land banks must be made through national farm loan associations. Practically all of the mortgages which have been pledged by these banks as collateral security for farm loan bonds were written through national farm loan associations. In thousands of instances the loan funds were delivered by the lending bank to the indorsing national farm loan association, frequently in the manner followed in this case, by means of a check drawn to the order of the association's secretary-treasurer and the borrower.

Let us consider a typical loan. A farmer applies for and obtains, through a national farm loan association, a loan of $5,000. Of this amount $3,000 is borrowed for the purpose of liquidating an over-due mortgage held by the receiver of a closed bank; $250 to pay delinquent taxes; $1,000 to discharge miscellaneous indebtedness which does not constitute a lien upon the land; the remaining $750, after deducting the charges of the land bank and national farm loan association incident to obtaining the loan, and the amount requisite for the borrower's stock subscription, is to be used for repairs to essential farm buildings. In that case, under the procedure authorized by the Federal Farm Loan Act, the land bank would remit the net proceeds of

the loan to the association. It probably would join the borrower as a copayee of the check, in order that he be certain of learning promptly that remittance had been made. The secretary-treasurer of the association would obtain a release of the outstanding mortgage and a receipt for the taxes, and the abstracting attorney would thereupon bring his abstract down to date, showing the bank's mortgage to be a first lien. This would leave in the hands of the secretary-treasurer of the association a balance of close to $1,700, from which, pursuant to the borrower's authorization, the secretary-treasurer would pay off the miscellaneous items of indebtedness. These items may and often do involve considerable time and effort on the part of the secretary-treasurer. In our hypothetical case, a portion of the loan proceeds is to be used by the borrower to pay for the cost of repairs upon his buildings, and the secretary-treasurer is required by Section 7 (12 U. S. C. § 714) of the Federal Farm Loan Act to see that the money is expended for this purpose. As a practical matter he will probably do so by holding the money and disbursing the same in payment of approved vouchers, or upon delivery of receipted bills.

It is apparent from the example just cited that it may be months before the last dollar of a Federal land bank loan actually finds its way into the hands of the borrower or of his creditors for the payment of whose bills he obtained a Federal land bank loan. In the meantime, the money is with the association, for the account of the borrower.

Under the decision rendered in the case at bar, no mortgage securing a loan of the type described in the foregoing example is a valid lien, for the full face amount of the mortgage, unless the last of the loan proceeds has been paid over by the secretary-treasurer of the association to the borrower or, upon his order, to his creditors. This rule,

if sustained, would render ineligible as collateral security many of the mortgages which are now deposited with the farm loan registrars and against which bonds have been issued.

It is respectfully submitted by this *amicus* that the Federal Farm Loan Act not only authorizes a Federal land bank to pay the consideration for a first mortgage to the indorsing national farm loan association, but makes such payment complete and valid as to the borrower. We have already mentioned the provision of Section 7 of the Act (12 U. S. C. § 714), by which the secretary-treasurer is required "to assure himself from time to time that the loans through the national farm loan association of which he is an officer are applied to the purposes set forth in the application of the borrower as approved". In this connection we also invite the Court's attention to the following provision of Section 12 of the Act (12 U. S. C. § 771, Tenth):

> "Every borrower who shall be granted a loan under the provisions of this Act shall enter into an agreement * * * that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, * * * the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith."

It is believed that these provisions of the Act, together with those which are discussed in detail in the brief of the Federal Land Bank of Columbia, clearly sustain the proposition that when a Federal land bank pays loan proceeds to the association which is authorized to receive them for the account of the borrower, such payment constitutes delivery of consideration for the mortgage; that the secretary-treasurer of the association may, in his discretion, pay over the loan proceeds to the borrower and then follow up the case to see that they are applied to the purposes for which they were obtained, or may retain such loan proceeds and

pay them himself in satisfaction of the debts or in payment of the accounts which the borrower stated in his application that he intended to liquidate from his loan.

The experience of the Federal land banks has indicated the wisdom of the provisions of law which permit the secretary-treasurer so to control the proceeds of the loans indorsed by his association. A loan is made not only upon the appraised value of the land, but also upon the anticipated ability of the farmer, after obtaining the loan, to meet his living expenses, his farm expenses and the installments on his loan from the fruits of the farm. If, instead of utilizing the loan proceeds in the example cited above for the purpose of making necessary repairs to essential farm buildings, the borrower should apply them to some extravagant purpose not requisite for the maintenance of the farm or the farm family, the security for the loan would not be placed in the condition that was anticipated by the association and the bank at the time the loan was indorsed by the one and made by the other. The association, as a co-obligor under the mortgage contract, is fundamentally interested in seeing that the loan funds are used for the purposes stated in the application. The Act provides the means by which the association can enforce such use of the funds, by authorizing the bank to make payment to it. The Act protects the borrower from misapplication of the funds by the association's secretary-treasurer by requiring him to be bonded (12 U. S. C. § 714).

8. This Case and the Future Operations of the Federal Land Banks.

The attention of the Court is invited to the provisions of the Emergency Farm Mortgage Act of 1933 (Public Law No. 10, 73d Congress, approved May 12, 1933). This Act authorizes the Federal land banks, during the two-year period following the passage of the Act, to issue bonds in

the amount of $2,000,000,000, such bonds to be fully guaranteed as to interest by the United States. The circumstances under which this Act was passed are familiar to the Court. The purpose of this provision, as the Court knows, was to provide a means whereby the indebtedness of the American farmer could be refinanced, to the extent possible thereunder, for the relief of the emergency so well known to the Court.

In making this provision, Congress selected the existing Federal land bank system as the instrumentality through which the refinancing activities should be conducted with respect to farm mortgages. If the Federal land banks are to perform the services contemplated by the Emergency Farm Mortgage Act, they must be in position to close $2,000,000,000 in farm mortgage loans within the short space of two years.

In order to lend two billion dollars, the Federal land banks must issue two billion dollars in bonds. These bonds can not be issued in anticipation of mortgages to be acquired. They can not be issued against mortgages which do not constitute first liens on the properties described therein for the full face amount recited in the mortgages and notes (opinion of Solicitor of the Treasury, March 21, 1927, copy annexed as Exhibit A). They may be issued only against collateral security equal in face amount to the bonds, and such security must consist of United States Government bonds (the purchase of which obviously does not help in the program of getting money quickly to the farmers) or mortgages constituting first liens on farm lands.

The banks will be greatly hampered in performing the services incident to the refinancing of farm debts if they are unable to close their loans through national farm loan associations in the manner authorized by the Federal Farm Loan Act, and to obtain valid mortgages for the full amount

of such loans upon delivery of consideration to the indorsing national farm loan association. Under the decision of the court below in this case, a Federal land bank could not obtain a valid first lien which would be available as collateral security for bonds until the secretary-treasurer of the association had disposed of the last dollar of the amount received by his association "for the account of" the borrower.

The court below held that the association's receipt of such fund it not a receipt by or for the borrower. It held also that the bank must make payment for the mortgage by delivering the funds to the association. These two conclusions we submit, if sustained, would hamper the banks in ordinary times. Under present conditions, with the urgent necessity which confronts the banks for rendering prompt service to applicants for loans, these two conclusions would have an extremely grave result. It would be impossible to predict the length of time which may elapse in the case of any particular mortgage between the date the bank transmits the loan proceeds and the date when the last item is cleared by the national farm loan association. During that entire period, in the case of each loan, the mortgage would be in suspense so far as the bank is concerned: It would constitute a potential mortgage, and not a first lien for the amount recited therein and paid out by the Federal land bank. It would not be available to the bank for deposit as collateral security for bonds from the sale of which further funds must be obtained in order to meet the requirements of thousands of applicants for Federal land bank loans.

9. Conclusion.

In conclusion, it is respectfully submitted that, both on the grounds presented in the brief filed on behalf of the Federal Land Bank of Columbia, and by reason of the

structure and mode of operation of a Federal land bank, as outlined herein, a correct interpretation of the Federal Farm Loan Act leads to the conclusion that a Federal land bank is authorized to deliver to a national farm loan association the proceeds of a loan made through such association, and that such delivery constitutes a complete performance by the bank of its obligations under the mortgage contract, and a delivery of consideration for the mortgage executed by the borrower in favor of the bank.

Respectfully submitted,

IRVING P. WHITEHEAD,
As Amicus Curiæ, Counsel for
The Federal Land Bank of Springfield, Springfield, Massachusetts.
The Federal Land Bank of Baltimore, Baltimore, Maryland.
The Federal Land Bank of Louisville, Louisville, Kentucky.
The Federal Land Bank of New Orleans, New Orleans, Louisiana.
The Federal Land Bank of St. Louis, St. Louis, Missouri.
The Federal Land Bank of St. Paul, St. Paul, Minnesota.
The Federal Land Bank of Omaha, Omaha, Nebraska.
The Federal Land Bank of Wichita, Wichita, Kansas.
The Federal Land Bank of Houston, Houston, Texas.
The Federal Land Bank of Berkeley, Berkeley, California.
The Federal Land Bank of Spokane, Spokane, Washington.

EXHIBIT A.

Office of the Solicitor of the Treasury.

March 21, 1927.

Hon. Carl T. Schuneman,
Assistant Secretary of the Treasury.

SIR:

Receipt is acknowledged of your communication under date of March 15, 1927, as well as of the copy of an opinion of counsel for the Federal Farm Loan Board thereto attached.

In answer to your query:

> "1. Has the Federal Farm Loan Board the authority to approve for less than the face amount, as security for bonds, a first mortgage taken for an amount in excess of the statutory limitations?",

you are advised that, in my opinion, it has not.

Section 12 of the Federal Farm Loan Act provides

> "That no Federal land bank organized under this Act *shall make loans except upon the following terms and conditions:*
>
> First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.
>
> * * * * * * *
>
> Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor."

Section 14 of said Act provides

> "That no Federal land bank shall have power—
>
> • • • • • • •
>
> Third. To accept any mortgages on real estate except first mortgages created *subject to all limitations imposed by section twelve of this Act.*"

Section 16 of said Act (*vide* paragraphs 3 and 8 thereof) makes the foregoing provisions also applicable to joint stock land banks.

Therefore, if a land bank should proceed to make a loan in excess of

> "fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon,"

the note as well as the mortgage securing said loan could not lawfully be assigned to and accepted by a farm loan registrar as security for a farm loan bond issue, because Section 19 of the Act (*vide* paragraph 4 thereof) provides that

> "No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except *first mortgages made subject to the conditions prescribed* in said sections twelve, • • • and sixteen."

As the foregoing provisions are mandatory, it follows that if a first mortgage is "taken for an amount in excess of the statutory limitations" aforesaid, the same is ineligible as security for a bond issue, and can not be made eligible for said purpose by the Farm Loan Board's approval for an amount less than the face value thereof.

It follows also that the Federal Farm Loan Board has no

> authority "to approve for less than the face amount, as security for bonds, a first mortgage taken for an amount in excess of the statutory limitations."

In answer to your query:

> "2. Has the Federal Farm Loan Board the authority to approve as security for Farm Loan Bonds a first mortgage which does not exceed fifty per centum of the appraised value of acquired land sold by a Land Bank and twenty per centum of the appraised value of the improvements thereon, regardless of the manner in which the balance of the sale price is secured,"

you are advised that, in my opinion, it has.

As has hereinbefore been pointed out land banks are authorized to make loans on approved first mortgage security, *provided* the amount loaned thereon *does not*

> "*exceed* fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal as provided in section ten"

of the Federal Farm Loan Act.

It has also been seen that such first mortgages (*vide* § 19, paragraph 4, hereinbefore quoted of the Farm Loan Act) may be accepted by farm loan registrars

> "as part of an offering to secure an issue of farm loan bonds, either originally or by substitution."

Therefore, if a first mortgage

> "which does not exceed fifty per centum of the appraised value of acquired land sold by a land bank and twenty per centum of the appraised value of the improvements thereon"

is taken as part payment therefor, said mortgage is eligible security for farm loan bonds,

> "regardless of the manner in which the balance of the sale price is secured."

The Act places no restrictions on the sale by land banks of acquired lands, and the "manner in which the balance

of the sale price is secured" by a purchaser thereof does not affect the stability and eligibility of the first mortgage loan for bond security purposes if said first mortgage loan has been made in compliance with the provisions of the statute.

Respectfully,

(Signed) R. J. MAWHINNEY,
Solicitor.

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